



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 11, 2022

IN THE MATTER OF:

Appeal Board No. 624173

PRESENT: MARILYN P. O'MARA, MEMBERS

In Appeal Board Nos. 624172 and 624173, the claimant appeals from the decisions of the Administrative Law Judge filed June 3, 2022, insofar as they sustained the initial determinations, holding the claimant eligible for Pandemic Unemployment Assistance at the weekly benefit rate of \$178, and charging the claimant with an overpayment of \$15,566.50 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a).

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. More testimony and evidence should be taken with respect to the question of whether the claimant is eligible for Pandemic Unemployment Assistance. The Judge denied the request made by the claimant for an adjournment in order to produce his 2019 Federal Tax Return because the initial determination had given him notice of the need to produce the document. However, based on our review of the record, we conclude that there was good cause to grant the adjournment because the claimant did not receive the initial determinations and because, at the

time of the hearing, the claimant was resident in an in-patient mental health center and could not easily access his financial records. Consequently, a further hearing is necessary for the claimant to produce these documents.

The claimant is directed to produce, at hearing, his entire 2019 Federal Tax return, including the Schedule-C, as well as any additional attachments and supporting documentation filed with the Internal Revenue Service. The claimant is placed on notice that failure to produce the evidence directed by the Board might result in the hearing Judge or the Board taking an adverse inference that the evidence not produced would not support the claimant's position.

The Judge may take any further testimony and evidence necessary to decide these matters.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination, holding the claimant eligible for Pandemic Unemployment Assistance at the weekly benefit rate of \$178, and charging the claimant with an overpayment of \$15,566.50 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the initial determinations set forth above, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER